



State of Washington  
Department of Revenue

# Excise Tax Advisory

Excise Tax Advisories (ETA) are interpretive statements issued by the Department of Revenue under authority of RCW 34.05.230. ETAs explain the Department's policy regarding how tax law applies to a specific issue or specific set of facts. They are advisory for taxpayers; however, the Department is bound by these advisories until superseded by Court action, Legislative action, rule adoption, or an amendment to or cancellation of the ETA.

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## HAZARDOUS SUBSTANCE TAX LINE ITEMIZING CUSTOMER BILLINGS - TAX MEASURE

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In many instances persons who first possess hazardous substances in this state, as defined in WAC 458-20-252 (Rule 252) and who have paid the hazardous substance tax of RCW 82.22.030, elect to pass along the cost of this tax to their buyers of such substances. The law neither expressly allows nor prohibits this practice. The Department of Revenue takes administrative notice of the fact that sellers generally recover all of their costs of doing business, including taxes, within their selling prices or charges for the goods sold.

Also, many sellers of hazardous substances have elected to separate the hazardous substance tax paid from their other charges to buyers and to line itemize the rate and/or amount of the tax. This practice is also not prohibited by the statutory law or Rule 252. However, this practice can be confusing to purchasers because it creates the appearance that the tax is merely being collected from the buyer by the seller as a collecting agent for the state, like retail sales tax. This is not the case. Rather, the legal incidence and economic burden to report and pay the hazardous substance tax falls upon the first person in possession of the substance in this state.

In addition, some buyers of hazardous substances have complained that the "wholesale value" of hazardous substances, which is statutorily defined as the manufacturer's selling price, should not include any amounts for freight or delivery charges, seller's profit, or any other post-production costs.

The following is the formal position of the Department with regard to these and related matters.

***ETBS have been made Excise Tax Advisories, and have retained their old number. Advisories with a 2 (plus three digits) are new advisories, ETBs that have been revised and readopted after review under the Department's regulatory improvement program, or advisories that have been revised and/or readopted.***

Please direct comments to:  
Department of Revenue  
Legislation & Policy Division  
P O Box 47467  
Olympia, Washington 98504-7467  
(360) 753-4161 eta@DOR.wa.gov

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- 1) Itemized billings. -- Any seller who elects to line itemize the hazardous substance tax on customer billings must correctly identify the tax as "Washington State hazardous substance tax." Also, if the tax rate is shown on customer billings it must be shown at the statutorily set rate of .008 or 8/10 of 1% of the wholesale value. Other composite or hybrid rates or percentages of the selling price will not be recognized as the sellers recovery of hazardous substance tax paid any may result in additional tax assessment.
- 2) Tax measure including post-productions costs. -- The correct statutory tax measure or basis is the selling price charged by the manufacturer (including oil refiners or other goods processors) to the first wholesale or retail buyer. This amount properly includes all charges of any kind, other than the tax itself, which are included in the selling price to the buyer, including any charges representing transportation costs, profits, or other manufacturer/seller's costs. The statutory law provides for no deductions in computing the hazardous substance tax.
- 3) Tax overcharges. -- If charges identified on customer billings as hazardous substance tax are recovered from buyers in an amount greater than the amount of tax which has been reported and paid to the state by the first person in possession, the seller will be liable to pay over all such overcharges to the state and may be subject to interest and penalties for retaining any such amounts identified as state tax.

In summary, the hazardous substance tax must be identified by the correct statutory name, recovered at the correct statutory rate upon the correct statutory measure, and may not be overcharged.

The Departments authority for these guidelines in administering the hazardous substance tax program is generally provided by sections 82.01.060, 82.32.050, and 82.32.300 RCW.